

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

DVH COMPANIES, INC.,	§	
D/B/A SOUTHWEST WHEEL COMPANY,	§	
AND D/B/A ETRAILERPART.COM,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 3-06-CV2084-P-ECF
	§	
vs.	§	
	§	
BROPFS CORPORATION,	§	
D/B/A ETRAILER.COM,	§	
Defendant.	§	

**REQUEST FOR CLERK'S ENTRY OF DEFAULT**

TO THE CLERK OF COURT:

Plaintiff, DVH Companies, Inc., d/b/a Southwest Wheel Company, and d/b/a etrailerpart.com, through its undersigned counsel of record, submits this Request for Clerk's Entry of Default against Bropfs Corporation, d/b/a etrailer.com, Defendant, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, and, in support thereof, allege the following:

I.

**Incorporation by Reference**

1. This Request is made in reliance upon the following evidence all of which are incorporated herein by reference as if set forth at length for all purposes:

(a) Plaintiff's Complaint for Declaratory Judgment and Cancellation of Trademark filed in this case, on November 9, 2006 (Docket No.<sup>1</sup> 1) (the "Complaint");

(b) The Summons issued in this case by the Clerk of Court to Defendant Bropfs Corporation, d/b/a etrailer.com, on November 13, 2006 (Docket No.2) (the "Summons");

(c) Affidavit of Service, dated November 21, 2006, by Barbara C. Stinnett, Certified Process Server, Texas Supreme Court ID # SCH1181, of Summons and Complaint served on the Texas Secretary of State as Agent for Defendant Bropfs Corporation, d/b/a etrailer.com, filed in this case on November 27, 2006 (Docket No.6) (the "Affidavit of Service");

(d) Certificate of Service, dated December 8, 2006, issued by the Secretary of State of the State of Texas, filed in this case on December 12, 2006 (Docket No.7) (the "Certificate of Service"); and

(e) The Record in this case.

## II.

### **Procedural History and Requested Relief**

2. On or about November 9, 2006 Plaintiff filed its Complaint in this case.

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<sup>1</sup> References to the Docket in this case are to the equivalently numbered documents on the docket maintained by the Clerk of Court pursuant to the Court's Case Management/Electronic Filing System.

3. On or about November 13, 2006, the Clerk of Court issued the Summons for service upon Defendant Bropfs Corporation, d/b/a etrailer.com (“Defendant”), by serving the Texas Secretary of State, as its agent for service of process, as authorized by Tex. Civ. Prac. & Rem. Code Ann. §17.041 *et seq.* (the “Long-Arm Statute”). *See Summons; Complaint* ¶¶ 6, 9

4. On or about November 21, 2006, Barbara C. Stinnett, Certified Process Server, served a copy of the Summons, Complaint, Civil Filing Notice and Standing Order Designating Case for Enrollment in the Electronic Case Files “ECF” System in this case, in person on the Texas Secretary of State pursuant to the requirement of the Long-Arm Statute. *See Affidavit of Service; Certificate of Service*

5. On or about December 1, 2006, the Texas Secretary of State notified Defendant of this lawsuit by delivering a copy of the Summons and Complaint to the Defendant via United States Certified Mail Return Receipt Requested, addressed to the Defendant at its home office at 3707 Veterans Memorial Parkway, Saint Charles, Missouri 63303, Attention: Michael H. Bross, Registered Agent and President, pursuant to the further requirements of the Long-Arm Statute. *See Certificate of Service*

6. On or about December 4, 2006, the Defendant received a copy of Summons and Complaint from the Texas Secretary of State and signed the Return Receipt, as evidence thereof. *See Certificate of Service*

7. Pursuant to the Rule 12 of the Federal Rules of Civil Procedure, Defendant was obligated to file an answer to the Complaint no later than December 11, 2006. *See*

*Bonewitz v. Bonewitz*, 726 S.W.2d 227 (Tex. App.—Austin 1987, writ ref'd n.r.e.); *Whitney v. L. & L Realty*, 500 S.W.2d 94, 96 (Tex. 1973); *Academy of Model Aeronautics, Inc. v. Sport Flyers of America*, Case No 3:98-CV-2401-T, United States District Court, Northern District of Texas, Dallas Division. (Courtesy copy of Order Denying Motion to Vacate Default Judgment attached)

8. Defendant has failed to plead or otherwise defend as required by Rule 12 of the Federal Rules of Civil Procedure. Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Clerk of Court is instructed to enter a default against a defendant who has failed to plead or otherwise defend as provided by the rules, when a failure to defend is made to appear by affidavit or otherwise.

### III.

#### **Prayer**

WHEREFORE PREMISES CONSIDERED, DVH Companies, Inc., d/b/a Southwest Wheel Company, and d/b/a etrailerpart.com, Plaintiff, respectfully requests that the Clerk of Court forthwith enter a default against Defendant Bropfs Corporation, d/b/a etrailer.com, Defendant, for failure to plead or otherwise defend as provided by Rule 55(a) of the Federal Rules of Civil Procedure, and that Plaintiff have and recover such other and further relief, legal and equitable, general and special, to which it may show itself justly entitled.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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